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Supreme Court of the United States

OCTOBER TERM, 1941

No. 534

A. B. HALL,
Petitioner.

Vs.

STATE OF GEORGIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA AND BRIEF IN SUPPORT THEREOF.

WILLIAMS PTG. CO.-ATLANTA

In re: Hall vs.
State of Georgia.

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Submitted—

C. G. BATTLE

Aug. 14, 1941.

Supreme Court of the United States

OCTOBER TERM, 1941

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STATE OF GEORGIA,
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF GEORGIA AND BRIEF IN SUPPORT THEREOF.

To the Honorable Harlan F. Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner Respectfully shows:

This is a petition for a writ of Certiorari to the Court of Appeals of the State of Georgia, to review a decision of the Court of Appeals of the State of Georgia, dated February 11th, 1941, (R. 46), adhered to on motion for rehearing on March 27th, 1941, with

opinion, and which was entered as a final judgment on June 18th, 1941, (R. 53 to 64). Application for certiorari to the Supreme Court of Georgia, and denial thereof on June 18th, 1941, without opinion, thus affirming a final verdict and judgment in the case of State of Georgia vs. A. B. Hall, and tried in the Criminal Court of Fulton County, Georgia, which had been denied on Certiorari to the Superior Court of Fulton County, Georgia; affirmed by the Court of Appeals of Georgia; adhered to on motion for rehearing by said Court of Appeals of Georgia; and denied on Certiorari to the Supreme Court of Georgia, and entered as a final judgment in the Court of Appeals of the State of Georgia on June 18th, 1941—(R. 64). The appeal throughout being brought by petitioner against the Respondent herein.

I

SUMMARY STATEMENT OF MATTERS INVOLVED.

This petitioner was tried in the Criminal Court of Fulton County, Georgia, on February 6th, 1940, upon an accusation which charged him with the offense of a misdemeanor. He was found guilty by the jury and sentenced by the Court to serve a term of twelve (12) months on the public works of Fulton County, Georgia—(R. 15). He carried his conviction to the Superior Court of Fulton County, Georgia, by writ of Certiorari, alleging that he was erroneously convicted, assigning both general and special grounds and naming the State of Georgia as Defendant, (R. 5 to 15).

He charged and alleged in his petition that the verdict and judgment should be reversed on the

grounds therein stated, (R. 5-13). Especially did he allege that his conviction was illegal, because the trial court (judge) refused to allow him the right to qualify the jurors as to their impartiality so as to obtain an impartial jury to try his case. That the Court's refusal to allow and permit him to ask specific questions, such as would tend, if answered in the affirmative, to disqualify them, or any of them, as jurors, was such error as to authorize, if not demand another trial.

Petitioner shows, in view of the foregoing, that it being a question as to the construction of a rule or principle of law which was considered, and which was vital to his right to a fair and impartial trial by an impartial jury as contemplated by the Constituion of the United States, Amendment six (6) thereof, that to refuse to allow him to so question the jurors to obtain such impartial jury was reversible error—(Motion for rehearing 57).

Petitioner further charged error on the part of the trial court in allowing in evidence, over objections, a certain indictment concerning petitioner's conviction or plea of guilty in the Superior Court of Fulton County in 1937, for the offense of violating the lottery laws—this ruling was alleged to be prejudicial to petitioner, (R. 10).

The Court of Appeals of Georgia, directly and on motion for re-hearing, with opinion, (R. 61), affirmed the ruling of trial Court; and Superior Court; thus holding:

> That the trial Court did not err in refusing, as a proper challenge to the qualifications of jurors, to allow the defendant to qualify the jurors as to whether they had contributed to the lottery in-

vestigation held in Fulton County, and whether they had been witnesses before the Grand Jury as to the operation of the lottery known as the number game in Fulton County, Georgia. Such contributions or appearances do not ipso facto inherently affect the qualifications as jurors.

And by so holding, denied petitioner's rights to a fair and impartial trial by an impartial jury as guaranteed to him under the 6th amendment to the Federal Constitution which provided among other things:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury, (R. 46).

II

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The questions involved are of general and public interest. They arise by reason of the denial of a right to petitioner under a provision of the Constitution of the United States as declared in the 6th amendment thereof, which provides, among other things:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial Jury."

By action of the Supreme Court, the Court of Appeals of Georgia in this case, is the highest Apellate Court of the State to which the case could be taken, hence the Writ is properly directed to that Court. The Supreme Court denying an application for Certorari in the case—rendering no opinion, the final judgment of the Court of Appeals was a judgment by the highest

Appellate Court in the State to which said case could be taken;

Mallett vs. N. C., 180 U. S., page 589 to 592;
Leigh vs. Green, 193 U. S., page 79;
French vs. Taylor, 190 U. S., page 274;
Bacon vs. Texas, 163 U. S., page 207.

The Court of Appeals of Georgia, under the provisions of the Constitutional amendment creating that Court had authority to render a judgment passing upon the Constitutional questions raised by the record in this case:

Acts of the General Assembly of Georgia, July 31st, 1906, and ratified October 3rd, 1906.

The decision of the Court of Appeals affirming the decision of the lower Court denied to petitioner his right to the Constitutional guaranty—as provided in the 6th amendment to the Constitution of the United States, which provides:

"A trial by an impartial Jury." Therefore, this Court has jurisdiction to review the decision of the Court of Appeals of Georgia.

The Court held, in effect, that it was not error for the trial Court to refuse to allow the defendant, (petitioner) to question the Jurors by asking other specific questions than the voir dire questions, and in refusing to allow defendant to qualify the Jury as specifically charged in his petition under a specific ground as therein charged and alleged—(R. 7 to 8).

This question appears in the records; was decided by the Court of Appeals of Georgia, (R. 53-61), and such question was clearly and necessarily involved in

the case so that the case could not have been determined without deciding such question;

Sayward vs. Denny, 158 U. S., page 180—Court passed on Federal question by clear and necessary intentment;

Powell vs. Brunswick, etc., 150 U. S., page 400 to 433;

Also *Yazoo & Miss. Valley Ry. Co. vs. Adams*, 180 U. S., page 1.

This question was raised in the petition for Certiorari to the Superior Court, (R. 5).

The judgment under review is in direct conflict with the opinion of the Supreme Court of Georgia in the cases of:

Thompson vs. State of Georgia, 109 Georgia Reports, page 272;

Humphries vs. State, 100 Ga. Reports, page 260;

And *Wells vs. State*, 102 Ga. Reports, page 659;

And also many decisions of other States on the same questions.

Therefore, petitioner believes that an authoritative decision from this Court settling the conflict is necessary.

Petitioner further believes, that the Court's refusal to allow him to offer proof by asking questions, which, in their nature, were such questions if answered in the affirmative as would tend to disqualify the jury, would be error, and a denial of his Constitutional rights as herein set forth;

Shettel vs. U. S., 113 Federal, 2nd, page 36, notes 6 and 7.

III

FEDERAL QUESTIONS ON WHICH ERROR IS ASSIGNED.

The judgment of the Court of Appeals of Georgia, denying petitioner the right to qualify the Jurors as to whether they had contributed to the lottery investigation held in Fulton County, and whether they had been witnesses before the Grand Jury as to the operation of the lottery known as the number game in Fulton County, Georgia, is a violation of the rights guaranteed to him under the "fair and impartial Jury" provision of the Constitution of the United States—6th amendment thereto.

The Court's affirmance of the decision of the lower Court in allowing other independent and unrelated transactions to be introduced in evidence on the trial of the case was error; and was set up and decided by the Court of Appeals both on direct writ of error, and motion for rehearing to that Court in this case.

Petitioner hereby furnishes a certified copy of the entire record of said case in the Court of Appeals of Georgia, and is made a part hereof by reference thereto.

WHEREFORE, your petitioner prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of Georgia, commanding said Court to certify and send to this Court, a full and complete transcript of the record and of the proceedings of the said Court of Appeals of Georgia had in the case numbered and entitled on its docket No. 28280, A. B. Hall, plaintiff in error, vs. State of Georgia, defendant in error, to the end that his cause may be reviewed and determined

by this Honorable Court as provided for by the Statutes of the United States; and that the order and judgment of the Court of Appeals of Georgia be reversed by this Court, and for such other and further relief as to this Court may seem proper; and your petitioner will ever pray.

Dated, Atlanta, Georgia, August 20, 1941.

A. B. HALL

By W. R. BENTLEY

AUGUSTUS M. ROAN

Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINION OF COURT BELOW

The opinion of the Court of Appeals of Georgia, is reported in 13 Southeastern Reporter, (2nd) page 868.

II

JURISDICTION.

1. The date of the order and judgment of the Court of Appeals of Georgia, affirming the conviction by the trial Court, is February 11th, 1941. The date of the entry of the judgment of the Court of Appeals of Georgia denying a rehearing is June 18th, 1941.

2. The Statutory provision which is believed to sustain the jurisdiction of this Court, is section 237 (b) of the judicial code as amended by the Act of February 13th, 1925.

3. The Court of Appeals of Georgia passed upon the constitutional question asserted in the trial court and denied such question.

III

STATEMENT OF THE CASE.

This has already been stated in the preceeding petition under, "Summary Statement of Matter Involved."

IV

AUTHORITIES AND ARGUMENT.

It is contended in this case that the question here raised involves a right under a provision of the Con-

stitution of the United States; that is, that the petitioner has been denied one of his rights contemplated by reason of what is known as a Constitutional guaranty of a trial by an impartial jury.

It is essential to faith in the Jury system that Jurors should determine the facts submitted to them wholly on the evidence offered in open Court, unbiased and unprejudiced by anything they may have seen or heard outside of the trial of the case. That faith can be sustained only by keeping our judicial proceedings free from suspicion of wrong. The question is, not whether any actual wrong resulted, but whether it created a condition from which prejudice might arise, or from which the general public would suspect that the jury might be influenced to reach a verdict on the grounds of bias or prejudice:

Stone vs. U. S., 113 Fed. (2nd) p. 70—note 11.

The Court further held in the Stone case:

> "There is no right more sacred than the right to a fair trial. There is no wrong more greivous than its negation."

Recognizing the foregoing as sound, both as a matter of fact and law, we verily believe the petitioner in this case was denied one of his sacred rights under the constitutional provision herein pointed out. The question as to when one has had a trial by a partial Jury is a Constitutional guaranty, which, for a violation thereof the trial would be illegal:

Shettel vs. U. S., 113 Fed. (2nd) p. 36—notes 6-7.

As pointed out in the petition, under rulings of this Court in the cases of *Sayward vs. Denny*, 158 U. S., p. 180; *Powell vs. Brunswick, etc.*, 150 U. S., p. 400 to 433; and *Yazoo & Miss. Valley Ry. Co. vs. Andrews*, 180 U. S., p. 1, the Court of Appeals of Georgia passed upon the Constitutional rights of this petitioner.

The decision of the Court of Appeals of Georgia is in direct conflict with the decisions of the Supreme Court of Georgia in the case of *Thompson vs. State*, 109 Ga., p. 273, in which that court HELD:

> "If, for any reason the impartiality of any one or more of the Jurors whose names appear on the panel is suspected, the proper method to determine the state of feeling of such Juror or Jurors, is by challenge to the polls (that is to question each one of the Jurors) and when thus challenged they may be put on their voir dire. And this is the rule, not only in the trial of criminal cases, where the charge amounts to a felony, but in the trial of misdemeanors as well."

We verily believe that the question being as to the Construction of a rule or principle of law which we consider, and is vital to the defendant's right to a fair and impartial trial as contemplated by the Constitutional provision herein charged, that this Court should review this case under a Writ of Certiorari to the Court of Appeals of Georgia, and thus settle the conflict between the Courts on this question.

The Court of Appeals passed upon the question because in its record and published opinion it held:

> GARDNER, J. The Court did not err in refusing as a proper challenge to the qualifications of

> Jurors to allow the defendant to qualify the Jurors as to whether they had contributed to the lottery investigation held in Fulton County, and whether they had been witnesses before the Grand Jury as to the operation of the lottery known as the number game in Fulton County, Georgia. Such contributions or appearances as witnesses do not ipso facto inherently affect the qualifications of Jurors.

The Court of Appeals of Georgia in the case of *Roberts vs. The State*, 4th Ga. App., p. 378 on this question held:

> A Jury should come to the consideration of a criminal case unaffected by any previous judgment or opinion as to a material fact in the issue to be tried, relating to the parties, the subject matter or credibility of the witnesses. And, it was further held: Where the defendant is on trial for a misdemeanor the Court may ask the statutory questions prescribed for the use in the trial of felony cases, or such other questions as will test the Jurors impartiality. If the Jury, when put on the voir dire qualifies and becomes apparently competent, either the defendant or the State then has the right to put the individual Jurors upon the Court as a trior, and to submit any proof that will tend to illustrate the question of qualifications.
>
> *Humphries vs. The State*, 100 Ga. Report, p. 260.
> *Wells vs. State*, 102 Ga., p. 659.

In this connection, it is here contended that the Court of Appeals of Georgia erred in holding and deciding in its original opinion entered in this case, and on the motion for a rehearing therein, that where a person was about to be tried for an alleged violation of the lottery laws of this state, and that prior thereto, there

had been held a Grand Jury investigation in the County in which the trial was to be had, and out of which investigation an indictment was returned against the defendant about to be tried, and for the same identical offense, that it was not error for the trial Court to refuse as a proper challenge to the qualifications of Jurors to allow the defendant to qualify the Jurors as to whether they contributed to the lottery investigation in the County of the trial, and whether they or any of them had been witnesses before the Grand Jury as to the operation of the lottery then under investigation by said Grand Jury, which was the same lottery for which he was about to be placed on trial; and in holding that such contributions or appearances as witnesses would not inherently effect the qualifications of Jurors. This ruling, as we contend, was a violation of the Constitutional rights of the defendant as herein pointed out.

Furthermore, this petitioner verily believes that the effect of the decision of the Court of Appeals of Georgia in this case is to further involve the question here under consideration in serious doubt, in that the decision of the Court of Appeals, on the questions as herein specified is, in effect as petitioner submits, in direct conflict with the decisions of the Supreme Court of Georgia and the Appellate Courts of other States upon the same questions. The confusion and conflict which exists as herein pointed out should, petitioner submits, be clarified and settled by reviewing this decision under a Writ of Certiorari;

Therefore, we submit that the Writ of Certiorari should be granted, and the decisions of the Court of Appeals of Georgia should be reversed.

Respectfully submitted,

AUGUSTUS M. ROAN,
1013 C. & S. Bank Bldg.,
Atlanta, Ga.

W. R. BENTLEY,
616 Peters Bldg.,
Atlanta, Ga.

Counsel for Petitioner.

End